IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 945 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
MINOR ABDUL HANIF ABDUL MUNAF THR'GUARDIAN ABDUL MUNAF SHEKH & 1 - Defendant(s)

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Appearance :

MS BHATT for MR HARDIK C RAWAL for Appellant(s) : 1,
None for Defendant(s) : 1,
MRS KETTY A MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/12/2006

ORAL JUDGMENT

1. The appellant has approached this Court to challenge the judgment and award dated 22nd March, 1990 passed by the MACT [Auxi.], Surat, in MACP No. 586 of

1984. By the said judgment, the Tribunal has granted compensation to respondent no. 1 a sum of Rs.32,200=00 together with interest at the rate of 12% per annum and proportionate costs.

2. The petitioner who was at the relevant time minor, through his guardian preferred the aforesaid petition for obtaining compensation of Rs.50,000=00 for the injuries suffered by him in a vehicular accident on 2nd June, 1983 at about 7:15 a.m. According to him, he was hit by the bus belonging to the appellant bearing registration no. GTE 5418, which was being driven by respondent no. 2 in a rash and negligent manner. His left leg was crushed and as a result of the same, the thumb of the left leg was amputated. He was admitted in the hospital of Dr. Kapadia i.e. Karmayoga Hospital and he remained in the hospital for 1 month and 12 days as indoor patient. He was thereafter removed to the hospital of Dr. Acharya and he stayed there for 1 month and 10 days also as indoor patient. Subsequently also on 18th November, 1983, he was admitted in the hospital as indoor patient and remained in the hospital till 5th December, 1983. In all he remained in the hospital for 3 months and 8 days. According to respondent no. 1 since the accident was caused due to negligence of respondent no. 2 who was

an employee of the appellant, the appellant was liable to pay compensation to him. He claimed Rs.50,000=00 by way of compensation.

3. The claim was resisted by the appellant contending that the vehicle in question was not at all involved in the accident. The appellant also contested the claim on the ground of non joinder of the necessary parties.

4. At the hearing of the petition, the parties led evidence, oral as well as documentary. Claimant has given evidence at Exh. 54. So far as the appellant is concerned, he has examined one B.K. Patel who was in its employment as driver. The claimant has deposed that on the relevant date, when he was going from Bharanpuri Bhagol traffic point, one S.T. Bus came from the side of the chawk and dashed against him from behind. He sustained serious injuries. According to him the number of the bus is GTE 5418. He has also stated that the driver of the bus had ran away after leaving the bus on the spot. In the cross-examination, his evidence is challenged. It is put to him that the accident was not caused by the bus bearing registration no. GTE 5418. In support of this evidence, the brother of the claimant is

also examined. He has deposed that the bus dashed against the victim and it stopped at a distance of about 8 to 10 feet. He had noted down the number. It was GTE 5418. He has also stated that the driver ran away from the place. In the cross-examination, an attempt has been made to challenge the evidence of this witness, especially on the aspect of the identity of the bus. However, nothing of importance has been elicited from the point of view of the appellant. One Shri B.K. Patel has been examined by the appellant to show that the bus bearing registration No. GTE 5418 was never plied on the route on which the accident took place. However, no log book has been produced to substantiate this fact. It is contended by Ms. Bhatt that respondent no. 1 has not lodged any criminal complaint nor he has produced any copy of the F.I.R., or panchnama and that itself would show that the vehicle is not involved. She has placed reliance on the decision rendered by this Court in the case of **Anitaben Wd/o. Nalinkumar Manubhai Shah & Ors., v. Abdulhakim AllarkhanShaikh & Ors., reported in 1995 (1) G.L.R., at pg. 479**. She has further submitted that except the oral description of the bus, no other proof is produced. According to her, the description is also not accurate.

5. I have carefully considered her submissions. I

have also gone through the record and proceedings of the case. This aspect has been adequately dealt with by the Tribunal. It is observed that the clinching evidence could have been the log book maintained by the appellant and the appellant could have produced it to prove the fact that the bus in question was never plied on the route on which the accident took place. That has not been done. If the written statement of the appellant is perused, it will show that no such contention to the effect that the offending bus was never plied on this route has been taken. It is simply stated that no accident had been caused by the driver of bus no. GTE 5418. As against that there is evidence of Abdul Rahim Abdul Hanif, witness no. 1 for the respondent i.e., the original claimant. It is at Exh. 59. He is the brother of the injured. He has stated that on the date of the incident at about 7:15 a.m., he and his brother were going towards the area known as Bhagol. At that time, one bus came from the side of Chawk. Near Bhagol the bus knocked down his brother. He was thrown at a distance of about 8 to 10 feet. He has stated that he had noted the number of the bus, that was GTE 5418. It was painted red and yellow. It was having two doors. Since his brother's leg was crushed, about 40-50 stitches were taken and the toe was amputated. In the cross-examination, he has

stated that he had written down the number of the bus on his hand. He has also stated that because the said bus caused accident, he had noted down the number. He has further stated that the bus was facing station and when the accident occurred, the passengers got down. He has also stated that he did not know any of the passengers. Abdul Hanif Abdul Munaf the injured has been examined as witness no. 1. His evidence is at Exh. 54. He is the victim himself. In the examination-in-chief, he had described in what manner the accident took place. He has also stated that his brother had noted down the number of the bus, which was GTE 5418.

6. So far as the appellant is concerned, it has examined Dalabhai Khalpabhai, whose evidence is at Exh. 61. In the examination-in-chief he has simply stated that he was working as driver in S.T. Depot at Surat. He has further stated that occasionally he used to go from Bhagol to station on official trip. However, on such trip no accident has been caused by him. He has further stated that the Police has not registered any case against him. He has stated that he was not the driver of the bus, bearing registration no. GTE 5418. He was driver of the bus bearing registration no. GTE 5419. It had two doors. Thus, it is clear that the bus bearing registration no.

GTE 5418 was being plied on that day on the route between Bhagol to station. It however, appears that so far as the bus which was driven by him i.e., GTE 5419 is concerned, it had two doors. He has not given description of the colour, whereas Abdul Rahim Abdul Munaf has not only deposed about the colour of the bus but has also stated that bus had two doors. No documentary evidence either in the form of service register or log book has been produced by this witness to substantiate his say that he was not driving the bus bearing registration no. GTE 5418. The appellant has, therefore, not produced satisfactory evidence to substantiate its case that the offending vehicle was never involved in the accident. In absence of such reliable evidence, the evidence of the respondent and his brother is required to be accepted. In my opinion, the respondent has adequately proved that the offending vehicle was the bus bearing registration no. GTE 5418.

7. I have perused the discussion on the aspect of the quantum of compensation. In the instant case it is amputation of toe. The victim had sustained multiple crushing injuries. He had to remain in the hospital for considerable period. The disability has been assessed at 10%. The Tribunal has held the income to be Rs.300=00 per

month. Therefore, the loss of earning capacity is assessed at Rs.30=00 per month and Rs.360=00 per year. The Tribunal has thus found that so far as the future loss of income is concerned, it would be Rs.5,400=00, considering 15 years multiplier, since the applicant was below 18 years, at the time when the accident took place. The Tribunal has also awarded Rs.15,000=00 for pain, shock and suffering. The total amount that has been awarded by the Tribunal for compensation is Rs.32,200=00 I do not think the assessment is wrong and the Tribunal has awarded just compensation considering the facts and circumstances of the case. Mr. Bhatt has relied on the decision of this Court rendered in the case of Anitaben Wd/o. Nalinkumar Manubhai Shah & Ors., v. Abdulhakim Allarkhan Shaikh & Ors. (supra), in support of her contention that since no F.I.R., panchnama or postmortem notes have been brought on record, and, therefore, the case of the respondent is not believable. On careful reading of the said decision, it appears that the Court has merely stated that these documents are only in the nature of supporting evidence, but it has not stated that if this documentary evidence is not produced, the claim cannot be granted. In the instant case, the evidence of eye witness is cogent and reliable. It stands duly corroborated by medical certificate. In view of the same,

this contention of Ms. Bhatt cannot be accepted.

8. This appeal has, therefore, no merits and in the result it is dismissed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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